

No. 4510-4Lab-70/15151.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Auto Steering India (P) Ltd. Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 195 of 1970

between]

SHRI SHIS RAM, DRAUGHTSMAN C/O FARIDABAD ENGINEERING WORKERS UNION
(REGD.), N. I. T. FARIDABAD AND THE MANAGEMENT OF M/s. AUTO STEERING
INDIA (P) LTD. FARIDABAD

Present :

Shr R. C. Sharma, for the management.

Nemo; for the workman.

AWARD

The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has been pleased to refer the following dispute to this Court for adjudication,—*vide* Gazette Notification No. ID/FD/198-A/36180, dated 3rd November, 1970.

“Whether the termination of services of Shri Shis Ram was justified and in order. If not; to what relief is he entitled ?”

On receipt of the reference usual notices were issued to the parties for 16th February, 1971. On the date fixed Shri Darshan Singh was present on behalf of the workman and Shri Sudarshan Sehgal, Manager of the respondent concern appeared on behalf of the management. On the request of the respondent an adjournment was given for filing the written statement. The case was fixed for 18th February, 1971. The management filed their written statement on the date fixed. It was pleaded that the workman had settled all his accounts and he had been paid off fully. Since nobody was present on behalf of the workman, the management were directed to produce their evidence on 26th March, 1971. On the date fixed Shri Roop Chand Sharma appeared on behalf of the management and stated that a settlement was arrived at on 25th July, 1970 with the workman and sum of Rs. 339.44 were paid to him. He further stated that Shri K. N. Gulati represented the workman during the settlement and that now no amount is due to the workman. Nobody was present on behalf of the workman even on the date fixed for evidence. In view of the statement of Shri R.C. Sharma, I hold that the dispute between the parties is completely settled and the workman is not entitled to any relief. I give my award accordingly. No order as to costs.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Dated 16th April, 1971.

No. 715, dated Rohtak, the 26th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 7th May, 1971

No. 4838-4-Lab-71/15132.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of Messrs Bhiwani Textile Mills, Bhiwani.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 74 of 1970

between

SHRI SHER SINGH, WORKMAN AND THE MANAGEMENT OF MESSRS BHIWANI TEXTILE
MILLS, BHIWANI

Present—

Shri Rohtas Kumar, for the workman.

Shri B.R. Ghai and Shri N.M. Jain, for the management

AWARD

The fact leading to this reference under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, may, briefly, be stated as under :—

Shri Sher Singh concerned workman had been working as a Beam Coolie in the Sizing Department of Messrs Bhiwani Textile Mills, Bhiwani. His services were terminated by the management on 25th June, 1969 allegedly on account of his violent behaviour towards his superior on 4th July, 1968 and after holding a proper domestic enquiry. Feeling aggrieved, he raised a demand on the management on 3rd July, 1969 for his reinstatement with continuity of his previous service and full back wages which was not conceded by the management. He, therefore, served the demand notice whereupon conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Bhiwani but without any success.

On the failure report received from the Conciliation Officer, the Governor of Haryana was pleased to refer the above dispute for adjudication to this Tribunal,—*vide* order No. ID/HSR/107-A/9911, dated 6th April, 1970 with the following term of reference :—

“Whether the termination of services of Shri Sher Singh, son of Lekh Raj, is justified and in order ?
If not, to what relief is he entitled ?”

On receipt of the reference notices were given to the parties. No separate claim statement was filed on behalf of the workman who simply relied upon the demand notice dated 3rd July, 1969 which had been received along with the reference.

In the written statement filed on behalf of the management on 3rd July, 1970 a preliminary objection was raised that there was no industrial dispute within the meaning of law as the present demand had been raised by Shri Sher Singh in his individual capacity and not by the other workman or the union and, therefore, this Tribunal had no jurisdiction in the matter.

On merits, it was alleged that on 4th July, 1968 at about 5.30 P.M. Shri Sher Singh was sitting in the garden outside the Dyeing department and when his senior Shri Mahabir Parshad asked him as to why he was idling away his time when the beams were to be fixed in the drawing-in-department on two stands and the looms were idle in the weaving department for want of beams he lost temper and gave a first blow on the left side of the neck of Shri Mahabir Parshad and also tried to throw him on the Stenter (Machine) besides giving him filthy abuse for which he was charge sheeted on the same day and in his reply to the charge sheet he had admitted that Shri Mahabir Parshad did tell him that the looms and the stands in the drawing-in-department were idle while he was outside, although the charge of assault on Shri Mahabir Parshad was denied. It was further alleged that a domestic enquiry was held into the above charge which was duly established against Shri Sher Singh and, in the circumstances the management was perfectly justified in terminating his services.

In his rejoinder Shri Sher Singh reiterated his above claim for reinstatement with continuity of previous service and full back wages controverting the allegations of mis-conduct and a proper domestic enquiry against him.

The preliminary objection as to the existence of the Industrial dispute and the validity of the reference of the same for adjudication to this Tribunal, it appears, was not pressed on behalf of the management before my learned predecessor obviously in view of the provisions of section 2A of the Act which entitled an individual workman to raise an industrial dispute against his dismissal notwithstanding the fact that no other workman or any union of the workmen is a party to the dispute. This objection has not been pressed before me also at the time of the final arguments in the case. Therefore, the only issue that arises for determination in the case is precisely the same as per the terms of reference.

The management has placed on the record the entire enquiry proceedings and examined the Enquiry Officer Shri Bhagirath Sharma, M.W. 1, who in his detailed statement has referred to the charge-sheet, Ex. M.W. 1/1, the reply to this charge sheet, Ex. M.W. 1/2, the letter of his appointment as Enquiry Officer, Ex. M.W. 1/3,

the letters addressed by him to Shri Sher Singh from time to time, Ex. M.W. 1/4 to Ex. M.W. 1/9, the enquiry proceedings conducted from 13th July, 1968 to 22nd May, 1969, Ex. M.W. 1/10 to Ex. M.W. 1/11, the complaint dated 4th July, 1968 made by Shri Mahabir Parshad, Ex. M.W. 1/12, the final enquiry report dated 18th June, 1969, Ex. M.W. 1/13 holding the above charge of mis-conduct as having been established against Shri Sher Singh the dismissal order passed by the management, Ex. M.W. 1/14, copy of the order communicated to Shri Sher Singh, M.W. 1/15. According to Shri Bhagarith Sharma, Shri Sher Singh concerned workman had been given full opportunity to participate in the enquiry, to cross-examination the witnesses produced on behalf of the management and to lead his own defence but he did not cross-examine the witnesses and had further declined to produce any defence as per his statement, Ex. M.W. 1/16. In cross-examination he has refuted the suggestion that the letters Ex. M.W. 1/4 to Ex. M.W. 1/9 were not thumb marked by Shri Sher Singh and that he (Enquiry Officer) was prejudiced against this workman and the entire enquiry proceedings had been fabricated by him.

Shri Sher Singh concerned workman has also made a lengthy statement denying the above charge of mis-conduct levelled against him by the management. According to him, the statement of the complainant Shri Mahabir Parshad was not recorded by the Enquiry Officer in his presence nor was he supplied with any copy of the statement. He has further denied that the enquiry officer had given him any opportunity to lead his defence. According to him, he had appeared before the Enquiry Officer on the first date of hearing fixed by him but no proceedings were held on that day because Shri Mahabir Parshad complainant had not turned up and on the next date of hearing the Enquiry Officer himself was not present and thereafter he never received any intimation from him regarding any further proceedings in the enquiry. Shri Sher Singh has further stated that previously also he had been dismissed from service but he had been reinstated under an award of the Industrial Tribunal which was in his favour and that the same Shri Bhagarith Sharma had held an enquiry even at that time on account of which he was prejudiced against him.

No other evidence has been led in the case on either side. I have given a considered thought to the material on record and the arguments advanced by the learned representatives of the parties.

As would be clear from the resume of the facts given above discussions, the case for the management is that on 4th July, 1968, Shri Sher Singh concerned workman in the discharge of his duties had misbehaved towards his senior Shri Mahabir Parshad by assaulting and abusing him and this charge of mis-conduct had been duly established against him in the enquiry held by Shri Bhagarith Sharma, M.W. 1 and, therefore, the management was perfectly justified in terminating his service. Shri Sher Singh admits having received the charge sheet, Ex. M.W. 1/1, though not the charge itself, as also the reply thereto given by him, Ex. M.W. 1/2 on record.

So, the main question that arises for consideration and is of vital importance in the case is, whether a fair domestic enquiry had been held into the above charge against this workman by giving him adequate opportunity of being heard and defend his case for this reference has to be made to the solitary statement of the Enquiry Officer examined as M.W. 1 and the statement of the workman himself. A perusal of the record of the proceedings prepared by the Enquiry Officer read with his statement before this Tribunal would show that the first date of hearing fixed by him for the enquiry was 13th July, 1968, but Shri Sher Singh had not appeared before him. The enquiry was, therefore, adjourned to 25th July, 1968 but on that day no proceedings could be held since the enquiry Officer had proceeded on long leave although Shri Sher Singh was present and he had been informed that the next date of the enquiry will be intimated to him on the return of the Enquiry Officer from leave. The proceedings thus remained suspended for a considerable period and were taken up only on 17th March, 1969 on the return of the Enquiry Officer from leave of which intimation was given to Shri Sher Singh but he did not appear on that day and the enquiry was adjourned to 22nd March, 1969. Shri Sher Singh, however did not appear even on that day in spite of service and the enquiry was again adjourned to 4th April, 1969. The statement of Shri Mahabir Parshad complainant was recorded by the Enquiry Officer on that day in the presence of Shri Sher Singh who did not put him any question in cross-examination but expressed his desire to produce some witnesses in defence for which purpose the enquiry was adjourned to 11th April, 1969. On his request the enquiry was again adjourned to 25th April, 1969 but he did not appear on that day. The Enquiry Officer, however, adjourned the enquiry to 22nd May, 1969 under intimation to Shri Sher Singh who appeared on the date fixed and made a statement that his witnesses had been won over by the opposite party and he had, therefore, no evidence to produce and the explanation given by him to the charge sheet on 5th July, 1968 might be treated as his evidence in the case.

The contention put forward on behalf of Shri Sher Singh, however, is that he has appeared before the Enquiry Officer only on 25th July, 1968 when no proceedings were held in the case and that thereafter he had no intimation of any date or dates fixed for the enquiry but there is no evidence to substantiate this contention. A perusal of the various letters addressed by the Enquiry Officer to Shri Sher Singh intimating the dates fixed by him for the enquiry proceedings which are Ex. M.W. 1/4 to Ex. M.W. 1/9 on record would show that Shri Sher Singh had information about these dates and he had thumb marked the letters in token of the receipt of the same. There is nothing to indicate that Shri Bhagarith Sharma, Enquiry Officer was prejudiced against this workman. It has been argued by the learned representative of the workman that previously also Shri Bhagarith Sharma held some enquiry against Shri Sher Singh. The relevant record pertaining to the alleged previous enquiry has not been produced in the instant case and Shri Bhagarith Sharma has expressed his ignorance about this fact. Even if it be assumed for the sake of arguments that Shri Sher Singh had been charge sheeted previously also and the enquiry into that charge sheet had been conducted by Shri Bhagarith Sharma that by itself would not be sufficient to conclude that he was biased against Shri Sher Singh so as to prejudice his findings in the present enquiry. Shri Bhagarith Sharma had no

business whatever to fabricate the record pertaining to the enquiry. His testimony which is supported by record has, therefore, got to be believed in preference to the vague and oral statement of the workman in the absence of any independent corroboration. I am supported in the above view by 1958-II-LLJ-259 cited by the learned representative of the workman.

Still another argument has been advanced on behalf of the workman that the management had been actuated by considerations of victimisation in taking the impugned action of the termination of the services of Shri Sher Singh because of his union activities. But there is no evidence to support this contention either. No record of the union has been produced nor has any union leader or worker come forward to disclose as to what were the activities of Shri Sher Singh which had dis-pleased the management. According to Shri Sher Singh the management had charge sheeted him simply because Shri Jhaju Weaving Master had malice against him and wanted to harm him. But that was admittedly not the plea taken by him in the explanation to the charge sheet which is Ex. M. W. 1/2. In that explanation even the plea of victimisation on account of union activities had not been taken.

So, taking into consideration all the facts and the circumstances of the case discussed above I do not find anything wrong with the domestic enquiry held by Shri Bhagirath Sharma into the charge of mis-conduct levelled by the management against Shri Sher Singh nor has the learned representative of the workman been able to satisfy me that the enquiry is vitiated by violation of any principle of natural justice. Shri Sher Singh had been charge-sheeted for mis-conduct in the discharge of his duties by using violence and filthy language against his superior Shri Mahabir Parshad and this charge having been duly established against him in the domestic enquiry, the management was perfectly justified in terminating his services. The issue involved in the case is accordingly decided and the reference is answered against the workman but without making any order as to costs.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 29th April, 1971.

No. 388, dated 29th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 29th April, 1971

No. 4837-4Lab-71/15136.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/S Jakh Industries, 27-B, Industrial Area, Gurgaon.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 121 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S JAKH INDUSTRIES, 27B, INDUSTRIAL AREA,
GURGAON

Present:—Shri Sardha Nand for the workmen.

Shri Ram Niwas for the management.

AWARD

An industrial dispute existing between the management of M/s Jakh Industries, 27B, Industrial Area, Gurgaon and three of their employees namely Sarvshri Hukam Chand, Babu Lal and Shiv Kumar was referred for adjudication to this Tribunal by order No. ID/GG/90-B-70/26582, dated 2nd September, 1970, of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, with the following term of reference.

Whether the action of the management in locking out the factory from 19th January, 1970 to 23rd January, 1970 was justified and in order. If not; to what relief is he entitled?

On receipt of the reference notices were given to the parties, claim statement on behalf of the concerned workmen was filed on 5th October, 1970 with the allegations that the management had declared lock out against them from 19th January, 1970 to 23rd January, 1970 and they were not allowed to work in the factory without any rhyme and reason although they had been reporting for duty continuously for all the 5 days.

The management, in the written statement filed on 4th December, 1970, denied having declared any lock out during the period in question and pleaded that these workers had themselves deliberately abstained from resuming duties even though they were repeatedly asked to do so. It was further contended that they had subsequently with drawn the present demand,—vide their joint application dated 16th May, 1970 submitted before Shri Dharminder Nath, Conciliation Officer, Gurgaon.

With the above avowment in brief, the management urged that the claim of the workmen was not maintainable. The following issue was framed in the case on 4th December, 1970 which is precisely the same as per term of reference:

Whether the action of the management in locking out the factory from 19th January, 1970 to 23rd January, 1970 was justified and in order. If not; to what relief is he entitled?

The management examined only one witness namely Shri Ram Niwas, then authorised representative M.W.1 who proved the application dated 16th May, 1970 Ex. M.W. 1/1 and stated that in view of the withdrawal of the present dispute by the concerned workers,—vide the above application there was no dispute pending between the parties, and as such no proceedings were called for in the case. In cross-examination, he admitted that the workers had filed an application under the Minimum Wages Act and the management had received notice of that application. He denied the suggestion made to him by the learned representative of the workmen that the application Ex. W.W. 1/1 related to the withdrawal of the proceedings under the Minimum Wages Act.

On the other hand Sarvshri Hukam Chand and Babu Lal, two of the concerned workmen themselves came into the witness box and denied having withdrawn the dispute the subject matter of the present reference. According to them the settlement with the management had been arrived at in connection with the proceedings initiated by them under the Minimum Wages Act. Shri Sardha Nand, General Secretary, Gurgaon Engineering Workers Union, authorised representative of the workmen coming into the witness box as W.W. 3 also made a similar statement denying the contentions raised on behalf of the management that the present dispute had been withdrawn.

Shri Ratti Ram, Steno-typist of the Labour Officer, Gurgaon, was summoned as a Court witness and he proved the demand notice copy Ex. C.W. 1/1. According to this witness, the management had failed to appear in the conciliation proceedings fixed for 27th January, 1970 and 11th February, 1970 whereupon the Conciliation Officer had submitted his failure report giving rise to the present reference. He further deposed that Sarvshri Hukam Chand and Babu Lal had moved an application under the Minimum Wages Act registered at No. 24 of 1970 copy Ex. W.W. 3/3 and that the parties had arrived at a settlement in those proceedings after getting some adjournment. This witness also proved the application dated 16th May, 1970 presented on behalf of Babu Lal and Hukam Chand on 19th May, 1970 requesting for the withdrawal of their demand No. 24 on account of settlement with the management.

After hearing arguments on both sides and going through the record, it was observed that the plea with regard to the withdrawal of the dispute raised on behalf of the management had not been brought under specific issue which was considered necessary for the proper adjudication of the present dispute. The following additional issue was, therefore, framed on 5th February, 1971 and the parties were given opportunity to lead further evidence on this issue.

Whether the workmen concerned had withdrawn the demand covered by the present reference by making a joint application before the Conciliation Officer, Gurgaon on 16th May, 1970 as alleged in para 3 of the written statement?

The management has examined two more witnesses, namely, Shri Inder Jit, Senior Inspector of Industries, Gurgaon M.W. 2 and Shri Kuldip Kumar Clerk of the Labour Officer, Gurgaon M.W. 3. Shri Inder Jit is the scribe of the application Ex. W.W. 1/1 and according to him it was written by him at the instance of Sarvshri Hukam Chand, Babu Lal and Shiv Kumar who had signed and thumb marked it in token of its being correct. He has also proved the other application Ex. C.W. 1/2 written at the instance of Sarvshri Hukam Chand and Babu Lal. In cross examination he has stated that the dispute between the parties was with regard to the payment of wages and the same had been settled between the parties in his presence in Sadar Bazar, Delhi which the aforesaid document has been executed but no payment was made to the workers in his presence.

Shri Kuldip Kumar M.W. 3 has deposed that Ex. M.W. 1/1 and C.W. 1/2 were produced by the management and he had made the necessary endorsement on the same in token of the receipt of the same.

Sarvshri Babu Lal and Hukam Chand again came into the witness box and stated that the alleged settlement was with regard to the claim under the Minimum Wages Act and that they had never withdrawn the present dispute.

Arguments in the case have been further heard and I have given a considered thought to the material on records. As would be clear from the resume of the facts given above, the main question that arises for consideration in the case is whether the concerned workmen had with drawn their demand, the subject matter of the present reference, *vide* their application dated 16th May, 1970 as alledged by the management. In view of their specific denial of this contention the burden was obviously on the management to bring on record reliable evidence to support the plea but after a careful scrutiny of the evidence, oral as well as documentary I am constrained to observe that the management has failed to discharge the burden. The workers and their authorised representative Shri Sardha Nand General Secretary of the Union, who had raised the present demand through the demand notice dated 21st October, 1970, have sworn testimony to the fact that the settlement with the management had been arrived at in connection with the proceedings under the Minimum Wages Act and that there was no settlement with regard to the dispute covered by the present reference and the same had never been with-drawn. Strangely enough none on behalf of the management has come forward to make the statement on oath and stand the test of cross examination by the workmen on this point. It has been stated that the proprietor himself had settled this dispute with the workmen at Delhi but he has not come into the witness box to state so. The statement of Shri Inder Jit, the scribe of the application dated 16th May, 1970 Ex. M.W. 1/1 is not of much help to support the above plea of the management. According to him the settlement was with regard to the wages of the workers and there was no talk of any other dispute and no payment was made to the workers in his presence. Obviously, therefore, the alledged settlement was with regard to the wages claimed by the workmen under the Minimum Wages Act for which they had moved an application before the prescribed authority and they have frankly admitted that they had with-drawn that application as a result of the settlement with the management.

It would not be out of place to consider here that inspite of due notice the management had not appeared in the conciliation proceedings and there is nothing on the record to indicate that the plea of the with-drawal of the dispute by these workmen had ever been raised by them before the Conciliation Officer. If that were so, there would have been no necessity for the present reference. It may be argued that the Conciliation Officer had submitted his failure report before the said settlement was arrived at between the parties. Even then the management could send an intimation to the authorities concerned about this settlement.

So, taking into consideration the facts and the circumstances of the case discussed above, I do not find any merit in the plea raised on behalf of the management that as a result of any settlement between the parties the workmen had with-drawn the dispute covered by the present reference. Moreover, it has not been disclosed as to what the settlement was. The demand of the workmen was for payment of their wages for the period from 19th January, 1970 to 23rd January, 1970 during which according to them the management had declared the lock out in the factory. No record has been produced to show that the wages for this period had been paid to the concerned workman. There was apparently no question of their having with-drawn the dispute without any consideration. The issue No. 2 is accordingly held against the management and in favour of the workmen.

Issue No. 1 As per term of reference.—The Management has not much to say with regard to this issue. According to the plea raised in the written statement. The contention is that the workmen had themselves deliberately abstained from duty during the period of question. But there is no evidence, documentary or oral, to warrent this contention. No attendance register or any other record has been produced. None has come forward on behalf of the management to support this plea, as already stated, nor have I been referred to any letter or warning issued by the management calling upon these workers to resume their duties. According to the sworn testimony of the workmen they had been attending the factory regularly during these 5 days but the management had closed the factory against them and not paid their wages. The management had apparently no justification in refusing work to these workmen during the days in question and thus deprive them of their due wages by locking out the factory against them from 19th January, 1970 to 23rd January, 1970 nor has the management tried to make out any justification for doing so. The issue is, therefore, decided in favour of the workmen and against the management and it is held that the action of the management in locking out the factory from 19th January, 1970 to 23rd January, 1970 was not justified and that being so, the claimants, namely, Hukam Chand, Babu Lal and Shiv Kumar are entitled to their full wages for these days.

The reference is accordingly answered in favour of the workmen and they are further entitled to the costs of the present proceedings which are assessed at Rs 30.

Dated the 30th April, 1971.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 390, dated the 30th April, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 30th April, 1971

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.